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No. 89-228

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

VOLKSWAGEN OF AMERICA, INC., and
BELL PORSCHE-AUDI INC.,
Petitioners,

v.

GERMAINE GIBBS, AMY GIBBS, LORI GIBBS, and
RAYMOND GIBBS,
Respondents.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., IN SUPPORT OF THE PETITION

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September 6, 1989

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MOTION OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION

Pursuant to Rule 36 of the Rules of this Court, the Product Liability Advisory Council, Inc. ("Advisory Council"), requests leave to file the accompanying brief as *amicus curiae* in support of the petition for a writ of certiorari. Counsel for the petitioners has consented to the filing of this brief; counsel for the respondents has withheld consent.

The Advisory Council is an association of industrial companies that was formed for the principal purpose of submitting *amicus curiae* briefs in appellate cases involving significant issues affecting the law of product liability. The issues presented by the petition have such significance because business activities by manufacturers such as those who constitute the membership of the Advisory Council have borne the brunt of a dramatic increase in the frequency and size of punitive damages verdicts in the last two decades. Researchers for the RAND Institute for Civil Justice have concluded that "[c]orporate defendants are in fact more likely than individuals or public agencies to be the target of [punitive damages] awards" and that "[p]unitive awards against businesses were far larger than those against individuals in both personal injury and business/contract cases." M. Peterson, S. Sarma & M. Shanley, *Punitive Damages: Empirical Findings* iii, 50 (1987).* Even more disturbing is that "[j]uries also award more money when the defendants are institutions or organizations rather than individuals—the 'deep-pocket' effect. . . . [W]e can detect a separate, statistically independent effect for deep-pocket defendants, even in cases that do not involve products or malpractice." D. Hensler, M. Vaiana, J. Kakalik & M. Peterson, *Trends in Tort Litigation: The Story Behind the Statistics* 21 (1987).

These empirical studies confirm what legal scholars and jurists have increasingly been noting: the woeful lack of procedural safeguards in punitive damages proceedings encourages punitive awards that are unpredictable and based on prejudice and caprice. The result has been to impose directly on manufacturers, and indirectly on consumers, workers, investors, and taxpayers, an increasing burden of unnecessary, unjustified punishments.

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* The authorities cited in this motion are also cited in the accompanying brief. The location of those authorities within the brief is identified in the Table of Authorities.

Accordingly, the Advisory Council seeks to submit the accompanying brief as *amicus curiae* to assist the Court in evaluating the public importance, practical consequences, and need for review of the punitive damages questions presented in the petition for a writ of certiorari. The Advisory Council requests that its motion for leave to file the accompanying brief as *amicus curiae* be granted for that purpose.

Respectfully submitted,

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BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., IN SUPPORT OF THE PETITION

INTEREST OF THE AMICUS CURIAE

The Advisory Council is an association of industrial companies that was formed for the principal purpose of submitting *amicus curiae* briefs in appellate cases involving significant issues affecting the law of product liability. The interest of the Advisory Council in the punitive damages questions presented in the petition for a writ of certiorari is fully described in the accompanying motion for leave to file this brief as *amicus curiae* in support of the petition.

PRELIMINARY STATEMENT

As shown in the opinion of the Superior Court of New Jersey, Appellate Division (Appendix C to the petition), the jury in this product liabiltiy action returned a verdict in favor of one of the plaintiffs for $10,000 in compensatory damages and $100,000 in punitive damages, and verdicts aggregating $5,000 in compensatory damages in favor of the other three plaintiffs. As shown in the other appendices to the petition, the jury was permitted, over the defendants' timely objections, to decide the punitive damages issues based on a mere preponderance of the evidence and in a non-bifurcated trial in which the issues of tort liability, compensatory damages, and punitive damages were decided together.

The defendants have petitioned this Court to consider whether the Due Process Clause of the Fourteenth Amendment (1) permits punitive damages to be imposed on such a minimal burden of proof and (2) permits liability and punishment to be determined together in a non-bifurcated trial when a defendant has moved for bifurcation to achieve separate consideration of the punitive damages issues. The Advisory Council urges the Court to review those issues.

REASONS FOR GRANTING THE PETTTION

REVIEW BY THIS COURT OF THE CONSTITUTIONALITY OF PUNITIVE DAMAGES PROCEDURES SUCH AS THOSE EMPLOYED BELOW IS NEEDED BECAUSE OF THE IMPORTANCE OF THE ISSUE TO THE CONSUMING PUBLIC AND TO THE MANUFACTURING COMMUNITY

Twice in the last three years, this Court has suggested that the prevailing system under which punitive damages are awarded presents constitutional issues that need to be addressed. *See Bankers Life & Cas. Co. v. Crenshaw*, 108 S. Ct. 1645, 1651 (1988); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986). Last term, the Court,

while holding that the Eighth Amendment's Excessive Fines Clause does not limit the size of punitive damages awards to private plaintiffs, explicitly left for another day the question of whether due process requires more procedural protection than is currently afforded to defendants in punitive damages proceedings. *Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 109 S. Ct. 2909, 2921 (1989).

In addition, in opinions in a variety of contexts, seven current members of the Court have characterized prevailing punitive damages laws as permitting unpredictable punishment based upon caprice or prejudice. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) (Marshall, Blackmun & Rehnquist, JJ.) (with Powell, J.); *Smith v. Wade*, 461 U.S. 30, 59 (1983) (Rehnquist, J., dissenting) (with Burger, C.J., & Powell, J.); *Bankers Life & Cas. Co. v. Crenshaw*, 108 S. Ct. at 1655 (O'Connor & Scalia, JJ., concurring in judgment); *International Bro. of Elec. Workers v. Foust*, 442 U.S. 42, 50 & n.14 (1979) (Marshall, Brennan & White, JJ.) (with Stewart & Powell, JJ.); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 270-71 (1981) (Blackmun, White & Rehnquist, JJ.) (with Burger, C.J., & Stewart & Powell, JJ.) Likewise, there has been an outpouring of legal scholarship critical of the absence of procedural protection in punitive damages proceedings. *See, e.g.*, Ellis, *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. Cal. L. Rev. 1 (1982); Long, *Punitive Damages: An Unsettled Doctrine*, 25 Drake L. Rev. 870 (1976); Owen, *Problems in Assessing Punitive Damages Against Manufacturers of Defense Products*, 49 U. Chi. L. Rev. 1 (1982); Wheeler, *The Constitutional Case for Reforming Punitive Damages Procedures*, 69 Va. L. Rev. 269 (1983).

Nevertheless, intolerably in a nation that guarantees due process, New Jersey and many other states have

chosen to withhold the procedural protection needed to honor that guarantee. In New Jersey, as elsewhere, the punitive damages system is characterized by (1) an absence of clear standards for defining the conduct and culpability on which punishment may be based; (2) an absence of *any* standard to determine whether punishment should be imposed, once the requisite culpability has been found; (3) an absence of standards for determining the appropriate amount of punitive damages, once the decision to impose some punishment has been made; and (4) an absence of objective standards for judicial review. Even worse, punishment under these vague laws is imposed under the minimum possible burden of proof, and jury consideration of liability, compensatory damage, and punishment issues occurs in a single, non-bifurcated proceeding. This procedural wasteland not only permits, but promotes, jury confusion and verdicts based on passion, prejudice, and caprice.

This case squarely presents the question of whether due process requires something more. It does so by addressing two specific procedural matters long recognized as being central to achieving fairness in punishment proceedings—namely, the burden of proof and the separation of the determination of guilt or innocence from the determination of punishment. The need for an answer by this Court has never been greater, especially in product liability litigation.

A recent empirical study by the RAND Institute for Civil Justice shows that the growth of the average award in litigation that manufacturers now regularly find themselves defending "has been truly explosive, reflecting increases ranging from 200 to more than 1,000 percent" in only two decades. D. Hensler, M. Vaiana, J. Kakalik & M. Peterson, *Trends in Tort Litigation: The Story Behind the Statistics* 18 (1987). A primary element in that explosion has been the phenomenal increase in both

the frequency and size of punitive damages awards against manufacturers.*

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* The mushrooming of punitive damages awards in product liability litigation in recent years is undoubtedly due in part to the nature of the expansion of design-defect product liability rules during the same period:

> The parallel developments of product-line litigation and increased punitive damages awards in product liability litigation appear to be related. Manufacturing defects, such as the occasional "exploding" carbonated-beverage container or the occasional impurity in a food package, generally have been viewed as mere aberrations or accidents. Punitive damages have rarely been sought and almost never awarded for those defects. On the other hand, plaintiffs almost always can, and now regularly do, characterize an alleged design defect or failure to warn as an intentional, calculated choice made by the manufacturer. It is in this context that juries now regularly hear plaintiffs' plea to punish manufacturers for "trading lives for profits."
>
> Modern substantive tort law principles tend to make punitive-damages arguments of that nature available in every design-defect and inadequate-warning case. Both the standard cost-benefit negligence test articulated by Judge Learned Hand in *United States v. Carroll Towing Co.* and the risk-utility test that now governs strict-liability product cases in most jurisdictions are based on the premise that manufacturers should make design and warning decisions by trying to determine whether the expected societal benefits of a contemplated design or warning outweigh the expected societal costs of that design or warning. Ironically, however, the more explicitly a manufacturer tries to make that determination *ex ante*, the greater is the risk that, if a jury subsequently weights the factors differently *ex post*, punitive damages will be imposed on the ground that the manufacturer knew that some number of injuries and deaths would occur and "consciously disregarded" them to maximize profits.

Wheeler, *A Proposal for Further Common Law Development of the Use of Punitive Damages in Modern Product Liability Litigation*, 40 Ala. L. Rev. —— (1989) (forthcoming) (footnotes omitted). Perversely, therefore, expansion of manufacturers' liability on the theory that strict product liability focuses on the product, not the producer, has resulted in more and larger punitive awards, which are supposed to be based on the producer's conduct and culpability.

Before 1970 there was only one reported appellate court decision upholding an award of punitive damages in a product liability case, and that was an award of $250,000. *See Toole v. Richardson-Merrell, Inc.*, 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967). Today, hardly a month goes by without a product-liability punitive damages verdict that is, like the one in this case, many times larger than the compensatory damages, or that is for several million dollars, or both. *See, e.g., O'Gilvie v. International Playtex, Inc.*, 821 F.2d 1438 (10th Cir. 1987) ($10 million punitive damages verdict), *cert. denied*, 108 S. Ct. 2014 (1988); *Kociemba v. G.D. Searle & Co.*, 707 F. Supp. 1517 (D. Minn. 1989) ($7 million punitive damages verdict); *Ealy v. Richardson-Merrell, Inc.*, 15 Prod. Safety & Liab. Rep. (BNA) 740 (D.D.C. Oct, 1, 1987) ($75 million punitive damages verdict, remitted to zero); *George v. Raymark Industries, Inc.*, 15 Prod. Safety & Liab. Rep. (BNA) 865 (Del. Super. Ct. Nov. 9, 1987) ($75 million punitive damages verdict); *Masaki v. General Motors Corp.*, 16 Prod. Safety & Liab. Rep. (BNA) 225 (Haw. Cir. Ct. Feb. 29, 1988) ($11.25 million punitive damages verdict); *Kemner v. Monsanto Co.*, 15 Prod. Safety & Liab. Rep. (BNA) 884 (Ill. Cir. Ct. Oct. 22, 1987) ($16.25 million punitive damages verdict); *Tetuan v. A.H. Robins Co.*, 241 Kan. 441, 738 P.2d 1210 (1987) ($7.5 million punitive damages verdict); *Hodder v. Goodyear Tire & Rubber Co.*, 426 N.W.2d 826 (Minn. 1988) ($12.5 million punitive damages verdict, remitted to $4 million), *cert. denied*, 109 S. Ct. 3265 (1989); *Roberts v. Seven-Up*, 16 Prod. Safety & Liab. Rep. (BNA) 466 (Utah Dist. Ct. Feb. 19, 1988) ($10 million punitive damages verdict, remitted to $375,000).

The effect of these punitive awards on the American public has been, and continues to be, devastating. Important health products have drastically risen in price or been withdrawn from the market altogether. *See Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 109 S. Ct.

at 2924 (discussing the "detrimental effect on the research and development of new products," including prescription drugs) (O'Connor & Stevens, JJ., concurring); *Brown v. Superior Court*, 44 Cal. 3d 1049, 1064, 245 Cal. Rptr. 412, 421, 751 P.2d 470, 479 (1988) (discussing withdrawal of Bendectin, a morning-sickness drug, from market after price increased by more than 300 percent; also discussing withdrawal of all but two manufacturers of diphtheria-pertussis-tetanus vaccine, and price increase from eleven cents per dose to $11.40 per dose in four years); Franklin & Mais, *Tort Law and Mass Immunization Programs* (1977) (discussing drug manufacturers' refusal to supply influenza vaccine until Government assumed the risk of lawsuits resulting from injuries caused by the vaccine). Promising new products have been withheld from introduction altogether. *See Brown v. Superior Court*, 44 Cal. 3d at 1065, 245 Cal. Rptr. at 421, 751 P.2d at 480 (discussing non-introduction of new drug for the treatment of vision problems because of unavailability of adequate liability insurance). American manufacturers have fallen behind in the development of major product groups. *See, e.g.*, Connell, *The Crisis in Contraception*, 1987 Technology Review 47 (statement by Elizabeth B. Connell, M.D., member of FDA Obstetrics and Gynecology Advisory Committee, that "the United States is losing its leadership role in this area [of contraceptive technology]—with potentially disastrous consequences for women and men in this country and elsewhere").

A less obvious effect of these Draconian punishments is that they spawn more frivolous lawsuits, prolong trials, and generate more appeals, all of which further disrupt the country's manufacturing activities. Moreover, the unpredictability of such awards makes it considerably more difficult for manufacturer-defendants and plaintiffs to evaluate cases for settlement. And these punishments have resulted in a "tax" on many products purchased by consumers:

> The tax accounts for 30 percent of the price of a stepladder and over 95 percent of the price of childhood vaccines. It is responsible for one-quarter of the price of a ride on a Long Island tour bus and one-third of the price of a small airplane. . . . [I]t adds more to the price of a football helmet than the cost of making it. The tax falls especially hard on prescription drugs, doctors, surgeons, and all things medical.

P. Huber, *Liability: The Legal Revolution and Its Consequences* 3 (1988).

The procedural infirmities in the punitive damages system also have led to an extraordinary number of post-trial reductions of jury awards. RAND researchers found, for example, that 48 percent of the defendants who had punitive damages verdicts rendered against them paid less than the amount of the verdict, either because of post-trial settlement or because of post-trial judicial action. *See* M. Peterson, S. Sarma & M. Shanley, *Punitive Damages: Empirical Findings* 26-30 (1987). An earlier study found that,

> out of forty-five reported cases decided by the New York appellate courts in the last decade in which the court determined whether there was sufficient evidence of malice to support any punitive award or determined whether the jury had awarded an excessive amount of punitive damages, thirty-five punitive damages awards were remitted or reversed.

Wheeler, *supra*, 69 Va. L. Rev. at 288. This frequent overturning of jury verdicts indicates that the procedures employed at trial are not adequately ensuring proper results.

In sum, the unpredictability, frequency, and magnitude of punitive damages awards against manufacturers are eroding our industrial base, detracting from the health and comfort of the consuming public, creating judicial diseconomies and inefficiency, and undermining our jury

system. Therefore, there is an urgent need for this Court to decide whether due process requires New Jersey and other states to provide the procedural safeguards whose absence has fostered these harmful results.

A. *The Need for Consideration of Whether Due Process Requires a "Clear and Convincing Evidence" Burden of Proof in Punitive Damages Proceedings*

This Court has held that a "clear and convincing evidence" burden of proof is necessary to preserve fundamental fairness in proceedings that threaten one of the parties with significant stigma. *See Santosky v. Kramer*, 455 U.S. 745, 762 (1982). The Court in *Santosky* stated that this burden of proof is especially required in proceedings in which there are "imprecise substantive standards that leave determinations unusually open to the subjective values of the [trier of fact]." 455 U.S. at 762. Punitive damages proceedings like the one below precisely fit that profile.

Punitive damages proceedings in New Jersey, as in many other states, threaten the defendants with significant stigma because punitive damages may be awarded only upon a jury's pronouncement that the defendant has committed "an 'evil-minded act' or an act accompanied by a wanton or willful disregard of the rights of another." *Fischer v. Johns-Manville Corp.*, 103 N.J. 643, 655, 512 A.2d 466, 472 (1986). In addition, the standards pursuant to which punitive damages are awarded and reviewed have been widely recognized by courts and commentators as both imprecise and subjective. *See e.g., Gertz v. Robert Welch, Inc.*, 418 U.S. at 350 (punitive damages laws leave juries "free to use their discretion selectively to punish expressions of unpopular views") (Powell, Marshall, Blackmun & Rehnquist, JJ.); *Rosenbloom v. Metromedia, Inc.*, 289 F. Supp. 737, 749 (E.D. Pa. 1968), ("Our reaction [in reviewing punitive damages verdicts] is admittedly visceral."), *rev'd on other grounds*, 415 F.2d 892 (3d Cir. 1969), *aff'd*, 403 U.S. 29

(1971); Ellis, *supra*, 56 S. Cal. L. Rev. at 34-43, 53-56; Owen, *supra*, 49 U. Chi. L. Rev. at 10-49.

Accordingly, it is not surprising that, in the seven years since this Court decided *Santosky*, numerous courts, legislatures, and scholars have agreed that punitive damages proceedings require the safeguard of a burden of proof beyond a mere preponderance of the evidence. Indeed, fully half of the states in this country now either disallow punitive damages in product liability actions or require that punitive damages rest upon proof by clear and convincing evidence or proof beyond a reasonable doubt. *See Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 332, 723 P.2d 675, 681 (1986) (clear and convincing evidence); *Traveler Indemnity Co. v. Armstrong*, 442 N.E.2d 349, 362 (Ind. 1982) (same); *Tuttle v. Raymond*, 494 A.2d 1353, 1363 (Me. 1985) (same); *Wangen v. Ford Motor Co.*, 97 Wis. 2d 260, 294 N.W.2d 437, 458 (1980) (same); *Killebrew v. Abbott Laboratories*, 359 So. 2d 1275, 1278 (La. 1978) (punitive damages not allowed unless expressly authorized by statute); *City of Lowell v. Massachusetts Bonding & Ins. Co.*, 313 Mass. 257, 47 N.E.2d 265 (1943) (same); *Veselenak v. Smith*, 414 Mich. 567, 327 N.W.2d 261 (1982) (punitive damages not allowed when actual damages provide compensation for mental distress and anguish); *Miller v. Kingsley*, 194 Neb. 123, 230 N.W.2d 472 (1975) (punitive damages not allowed); *Vratsenes v. N.H. Auto, Inc.*, 112 N.H. 71, 289 A.2d 66 (1972) (same); *Stanard v. Bodin*, 88 Wash. 2d 614, 565 P.2d 94 (1977) (punitive damages allowed only if expressly authorized by statute); Ala. Code § 6-11-20 (Supp. 1988) (clear and convincing evidence); Alaska Stat. § 09.17.020 (1986) (same); Cal. Civ. Code § 3294(a) (Deering Supp. 1989) (same); Fla. Stat. § 768.73 (1987) (same when punitive award exceeds three times compensatory award); Ga. Code Ann. § 51-12-5.1(b) (1987) (clear and convincing evidence); Iowa Code § 668.A.1 (1987) (same); Kan. Stat. Ann.

§ 60-3701(c) (1988) (same); Ky. Rev. Stat. Ann. § 411.184(2) (Baldwin 1988) (same); Minn. Stat. Ann. § 549.20 (West Supp. 1988) (same); Mont. Code Ann. § 27-1-221(5) (1987) (same); Ohio Rev. Code Ann. § 2307.80(A) (Anderson 1987) (same for product liability actions); Okla. Stat. tit. 28, § 9 (1987) (clear and convincing evidence required if punitive award exceeds compensatory award); Or. Rev. Stat. § 30.925 (1988) (clear and convincing evidence required for product liability actions); Utah Code Ann. § 78-18-1 (Supp. 1989) (clear and convincing evidence); Colo. Rev. Stat. § 13-25-127(2) (1987) (proof beyond a reasonable doubt).

Unfortunately, the State of New Jersey and others like it have not seen fit to provide this basic safeguard against the abuses and fundamental unfairness that flow from procedures that permit discriminatory punishment based on subjective, imprecise standards. Review by this Court is needed to prevent these states from continuing to deprive defendants of the procedural protection guaranteed by the Due Process Clause.

B. *The Need for Consideration of Whether Due Process Requires Bifurcation in Punitive Damages Trials When Requested by the Defendant*

The importance of the bifurcation of punitive damages trials likewise arises from the importance of ensuring that state-sanctioned punishment not be imposed on the basis of passion, prejudice, or jury confusion. This Court has recognized that the penal purpose of punitive damages and the evidence used to prove punitive damages claims present substantial risks of such improper verdicts.

The Court has stated, for example, that "punitive damages may be employed to punish unpopular defendants." *International Bhd. of Elec. Workers v. Foust*, 442 U.S. at 50 & n.14. *Accord City of Newport v. Fact Concerts,*

Inc., 453 U.S. at 270 ("Because evidence of a tortfeasor's wealth is traditionally admissible as a measure of the amount of punitive damages that should be awarded, the unlimited taxing power of a municipality may have a prejudicial impact on the jury, in effect encouraging it to impose a sizable award."); *Smith v. Wade*, 461 U.S. at 59 ("punitive damages are frequently based upon the caprice and prejudice of jurors") (Rehnquist, J., Burger, C.J., & Powell, J., dissenting).

In addition, the New Jersey Supreme Court has emphasized that strict product liability claims and punitive damages claims are fundamentally different "in purpose and in the policies each seeks to promote" and that "evidential differences" also separate the two. *Fisher*, 103 N.J. at 656, 512 A.2d at 473. Thus, when punitive damages issues and strict liability issues are tried together, a serious risk of jury confusion arises.

The New Jersey Supreme Court also has recognized that the need to place limits on the total punishment in product liability litigation requires that a defendant be allowed to introduce evidence of other adverse judgments, of the defendant's financial status, and of the effect that a punitive award would have. *Fischer*, 103 N.J. at 669, 512 P.2d at 480. But the same court has further recognized "that defendants may be reluctant to alert juries to the fact that other courts or juries have assessed punitive damages for conduct similar to that being considered by the jury in a given case." *Fischer*, 103 N.J. at 670, 512 A.2d at 480. *Accord* Wheeler, *supra*, 69 Va. L. Rev. at 295 ("This well-intentioned principle, however, offers little solace to a defendant who must face a jury that will decide liability, compensatory damages, the question of whether to award any punitive damages, and the amount of punitive damages."); Owen, *supra*, 49 U. Chi. L. Rev. at 52-53. Accordingly, bifurcation is needed to make the right to introduce such important evidence real, not illusory.

The New Jersey Legislature has recognized as much. In 1987 that body enacted product liability reform legislation that expressly requires bifurcation of punitive damages proceedings. *See* N.J.S.A. 2A:58C-5(b). But the court below held the legislation inapplicable to this case and refused the defendants' motion for bifurcation.

There is, in sum, an urgent need for this Court to consider whether New Jersey and like states have failed to provide procedural safeguards that are constitutionally required. *See Bankers Life & Cas. Co. v. Crenshaw*, 108 S. Ct. at 1655 ("the Court should scrutinize carefully the procedures under which punitive damages are awarded in civil lawsuits") (O'Connor & Scalia, JJ., concurring in judgment). The availability of the two specific safeguards in question will substantially affect the fairness of punitive damages proceedings, the size of product liability judgments, litigation costs, the efficient settlement of lawsuits, and the availability and price of manufactured products to the American public.

CONCLUSION

The petition for a writ of certiorari should be granted.

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